In the Supreme Court of the United States

OCTOBER TERM, 1966

No.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, APPELLANTS

v.

SASKATCHEWAN MINERALS (SODIUM SULPHATE DIVISION)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON

JURISDICTIONAL STATEMENT

OPINIONS BELOW

The opinion (App. A, *infra*, pp. 9–17) and supplemental opinion (App. C, *infra*, pp. 20–21) of the district court are reported at 253 F. Supp. 504. The report of the Interstate Commerce Commission (App. E, *infra*, pp. 24–43 [1]) is printed at 325 I.C.C. 621.

JURISDICTION

This action was originally brought under 28 U.S.C. 1336, 1398, 2284 and 2321–2325 to set aside an order

[1] There was no formal printed record in the court below. We have therefore printed the Commission's report in an appendix hereto.

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of the Interstate Commerce Commission. The amended judgment of the three-judge district court (App. D, *infra*, pp. 22–23) setting aside the Commission's order was entered on April 6, 1966. The United States and the Interstate Commerce Commission filed a notice of appeal on June 6, 1966. The jurisdiction of this Court to review the judgment of the district court on direct appeal is conferred by 28 U.S.C. 1253 and 2101(b). *Southern Ry. Co.* v. *State of North Carolina*, 376 U.S. 93; *American Trucking Associations* v. *United States*, 364 U.S. 1.

STATUTE INVOLVED

Section 3(1) of the Interstate Commerce Act, 49 U.S.C. 3(1), provides:

> It shall be unlawful for any common carrier subject to the provisions of this part to make, give, or cause any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic, in any respect whatsoever; or to subject any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever; *Provided, however,* That this paragraph shall not be construed to apply to discrimination, prejudice, or disadvantage to the traffic of any other carrier of whatever description.

QUESTION PRESENTED

The Interstate Commerce Commission found that shipments of salt cake from California to points in Oregon and Washington did not enjoy an "undue or unreasonable preference or advantage" in rail rates over salt cake shipped to the same points from Saskatchewan. The district court set aside the Commission's order and dismissed the complaint on the ground that the order was not supported by substantial evidence, and remanded the case to the Commission with an explicit direction to grant the complaining shipper appropriate relief. The question presented is whether the district court by this form of order improperly precluded the Commission from further consideration of the substantive merits of the charge of undue or unreasonable preference or prejudice.

STATEMENT

Appellee filed a complaint before the Interstate Commerce Commission under Section 13(1) of the Interstate Commerce Act, 49 U.S.C. 13(1), charging that existing international rail rates on salt cake from certain points in California to specific points in Oregon and Washington were unreasonably preferential, in violation of Section 3(1) of the Interstate Commerce Act, 49 U.S.C. 3(1), as compared with rates on the same commodity shipped from Chaplin, Saskatchewan to the same destinations. The complaint sought no reparations, but only an order requiring for the future that comparable rates for shipping salt cake by rail from Saskatchewan and from California be maintained. The Commission, after hear-

ings, ruled that the lower rates on salt cake shipped from California did not result in undue preference or prejudice, because they were established to meet competition from water transportation and there was no comparable water competition for shipments of salt cake from Chaplin (App. E, *infra*, pp. 25, 42–43).

Appellee brought this action to set aside the Commission's order. The three-judge district court held that there was "no substantial evidence" (App. A, *infra*, p. 14) to support the Commission's finding that the railroads shipping salt cake from California faced any real competition from water transportation. At the court's instruction, appellee submitted a proposed order remanding the matter to the Commission with instructions to "grant to the plaintiff relief, in alternative form, pursuant to Section 3(1)." Appellants objected to this restrictive language and proposed an order remanding to the Commission for further proceedings consistent with the opinion of the court.

On January 27, 1966, the district court entered judgment (App. B, *infra*, pp. 18–19) providing that the Commission's orders

> * * * be, and they are hereby, set aside, and that the proceedings be remanded to the Commission for further proceedings with instructions to grant relief to the plaintiff in accordance with the opinion heretofore entered by this court.

The United States and the Interstate Commerce Commission moved for amendment of the judgment, asking that the court make clear whether it intended to remove the Commission's discretion to take additional evidence on the question of whether the rate differential

was lawful. In response, the court filed a supplemental opinion (App. C, *infra*, p. 20), stating that:

> It is the intention of this court that the Interstate Commerce Commission be free under said judgment to open the proceedings for the receipt of additional evidence limited, however, to the nature of the relief to be granted to the plaintiff. It is not intended that the Commission receive additional evidence on the right of the plaintiff to be granted such relief.[2]

THE QUESTION IS SUBSTANTIAL

The court below held that the Commission erred in finding that the rate differential was justified by competitive conditions, and accordingly set aside the Commission's order of dismissal. We do not challenge this determination here. But the court went on to provide that, on remand, the Commission was not to consider further the substantive issue whether the rates were lawful, but was to assume they were not and limit itself to issues of relief. The restriction upon the remand was manifestly improper.

It is settled law that "an administrative determination in which is imbedded a legal question open to judicial review does not impliedly foreclose the administrative agency, after its error has been corrected, from enforcing the legislative policy committed to its charge" (*Federal Communications Commission* v. *Pottsville Broadcasting Co.*, 309 U.S. 134, 145) and hence that "[a]fter the remand was

[2] The district court's amended judgment (App. D, *infra*, p. 23) ordered the matter "remanded to the Commission for further proceedings with instructions to grant relief to the plaintiff * * *."